But as to what is necessary to constitute such a ratification, the cases are at variance: see *Adams* v. *Gay*, 19 Vt. 358; *Williams* v. *Paul*, 6 Bing. 653; *Froewert* v. *Decker*, 13 Chicago Legal News 186. The case of *Tucker* v. *Mowry*, seems the most reasonable upon this point, but it not being considered in the principal case, reference is simply made to *Froewert* v. *Decker*, *supra*, for the further consideration of this subject, where the cases will be found fully collected and ably considered.

MARSHALL D. EWELL.

United States District Court, Eastern District of Michigan.

THE GARLAND.

Although by the common law, and apparently also by the civil law, no action will lie to recover damages for the death of a human being, in admiralty, a libel by a father to recover for the loss of the services of his minor son, killed in a collision, will be sustained.

Where a statute confers upon an administrator the right to recover for a loss of life occasioned by the wrongful act, neglect or default of another, if such loss of life is occasioned by a collision upon navigable waters, the administrator may proceed by a libel *in rem* against the offending vessel.

IN Admiralty. The original libel claimed damages for the loss of the services of two minor sons of the libellant, killed in a collision between the steamers Garland and Mamie, in the Detroit river. The collision was alleged to have been occasioned by the fault and negligence of the Garland.

A supplemental libel was filed, setting up the appointment of libellant as the administrator of his sons' estate, and claiming to recover in this capacity under an act of the legislature of Michigan requiring compensation for death by wrongful act, neglect or default. Exceptions were filed to both libels, on the ground that a court of admiralty had no jurisdiction of the subject-matter.

Alfred Russell, for libellant.

Moore & Canfield, for claimant.

BROWN, D. J.—Can the original libel be maintained for the loss of services? Ever since the case of *Baker* v. *Bolton*, 1 Camp. 493, it has been a settled doctrine of the common law that the death of a human being cannot be complained of as an injury in any court of civil jurisdiction. In such case the liability of the defendant ceases with the life of the person injured. This rule has remained undisturbed by a single well considered opinion, except that of *Sullivan* v. *The Union Pacific Railway Co.*, 3

Dill. 334, for over seventy years, and although it seems to be based upon technical grounds, and does not commend itself to one's sense of natural justice, it is too firmly established to be shaken by judicial opinion. Such was also the ruling of the Supreme Court of the United States in *The Insurance Co.* v. *Brame*, 95 U. S. 754, wherein it is said "that it is impossible to speak of it as a proposition open to question." The civil law writers appear generally to take the same view, although the Court of Cassation, in construing the Code Napoleon, seem to have held that such an action would lie: *Hubgh* v. *N. O. & C. Railroad Co.*, 6 La. Ann. 495; *Hermann* v. *Carrollton Railroad Co.*, 11 Id. 5.

Were this an original question, then, I should feel compelled to hold that this libel could not be maintained. But other courts of admiralty in this country have furnished so many precedents for a contrary ruling, I do not feel at liberty to disregard them, although I am at a loss to understand why a rule of liability differing from that of the common law should obtain in these courts. The earliest case upon the subject is that of *Plummer* v. *Webb*, 1 Ware 75, in which Judge WARE upheld a libel by a father for the death, by ill-treatment, of his minor son. On the question being first presented to Judge SPRAGUE, he held, in *Crapo* v. *Allen*, 1 Sprague 184, that "for mere torts, the right of action by the general maritime law, as by the civil law, dies with the person injured;" citing Hall's Admiralty Practice 21; Dunlap's Admiralty Practice 87. But, on reconsidering the subject in *Cutting* v. *Seabury*, 1 Sprague 522, he thought it could not be considered as settled law, that no action could be maintained for the damages occasioned from the death of a human being; but no decided opinion was pronounced upon the point, and the libel was dismissed on other grounds. Notwithstanding the learned judge made no attempt to distinguish between a court of common law and a court of admiralty, his decision in *Cutting* v. *Seabury* has been cited in a large number of cases as a precedent for holding that a court of admiralty would sustain such a suit, though a court of common law would not: *The Sea Gull*, Chase's Decisions 145; *The Highland Light*, Id. 150; *The Towanda*, 23 Int. Rev. Rec. 384; *The Charles Morgan*, 18 Am. Law. Reg., N. S. 624.

The whole subject is exhaustively discussed by the learned judge of the district of Oregon, in the case of *Holmes* v. *The O. & C. Railway Co.*, 5 Fed. Rep. 75, and the jurisdiction sus-

tained. Against this concurrence of co-ordinate courts, I do not feel at liberty to set up my own opinion, particularly in view of the fact that the common-law rule seems to be consonant neither with reason nor justice.

I find less difficulty in sustaining libellant's claim under his supplemental libel. By chapter 212 of the Compiled Laws of this state, "whenever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would be liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony." The second section provides that the action shall be brought by the personal representatives of the deceased person for the exclusive benefit of his widow and next of kin. The tort in this case occurred upon navigable waters, and, had the deceased survived, there is no question that he could have maintained the libel irrespective of any state statute. In *The Steamboat Co.* v. *Chase*, 16 Wall. 532, Mr. Justice CLIFFORD expressed a doubt whether a state statute could be regarded as applicable in such a case to authorize the legal representatives of the deceased to maintain such an action for the benefit of the next of kin, giving as a reason that state laws cannot extend or restrict the jurisdiction of federal courts. We had supposed, from the reading of other cases, that where a state statute gave a right of action, a federal court would administer the remedy where the requisite jurisdictional averments could be made; and, if the action was maritime in its nature, a court of admiralty would be a proper tribunal. Thus, in *Ex parte McNiel*, 13 Wall. 243, a libel was sustained under a state statute allowing pilotage fees to the pilot who first tenders his services.

In delivering the opinion, Mr. Justice SWAYNE observes: "The state law cannot give jurisdiction to any federal court. But that is not the question in this case. A state law may give a substantial right of such a character that, where there is no impediment arising from the residence of the parties, the right a may be enforced in the proper federal tribunal, whether it be court of equity, of admiralty or of common law. The statute

in such cases does not confer the jurisdiction; that exists already, and it is invoked to give effect to the right by giving the appropriate remedy. This principle may be laid down as axiomatic in our national jurisprudence." Other cases in the same court announce a similar doctrine. But this question is also so thoroughly reviewed in the case of *Holmes* v. *The O. & C. Railway Co.*, to which attention has been already called, that any further consideration of the subject will result in a useless repetition of Judge DEADY'S reasoning, in which I fully concur.

In England the question whether a suit will lie in admiralty under Lord CAMPBELL'S Act is still unsettled. Sir ROBERT PHILLIMORE sustained the jurisdiction, with some hesitation, in the case of *The Guldfoxe*, Law Rep., 2 Ad. & Ec. 325, and again in *The Explorer*, Law Rep., 3 Ad. & Ec. 289. These rulings were affirmed in the Privy Council in *The Beta*, Law Rep., 2 P. C. 447. The question again arose in the case of *The Franconia*, 46 Magistrate Cases 17, wherein the Court of Admiralty again asserted its jurisdiction. On appeal to the new Appellate Court the lord justices were equally divided in opinion. In a similar case (*Smith* v. *Brown*, Law Rep., 6 Q. B. 729) the Court of Queen's Bench issued a writ of prohibition to the Admiralty Court. See Marsden on Collisions 64.

The whole controversy turned upon the construction to be given to the word "damage" in the Admiralty Court Act, the Court of Queen's Bench contending that the application of this word should be limited to cases of damage to property, while the Privy Council considered that it applied equally to injuries to persons. As the jurisdiction of Admiralty Courts in this country is not fixed or limited by any similar statute, these decisions throw but little light upon the question.

Upon the whole I think the exceptions should be overruled. If I am in error the Supreme Court will, upon application for a writ of prohibition, afford a summary and speedy relief.

CAN THE PERSONAL REPRESENTATIVES OF ONE WHOSE DEATH HAS BEEN WRONGFULLY CAUSED UPON WATERS WITHIN ITS JURISDICTION, RECOVER DAMAGES THEREFOR IN A COURT OF ADMIRALTY?

There is no difficulty in answering this question affirmatively, in cases where the injury is inflicted upon navigable waters within the jurisdiction of a state. All the states have passed statutes similar to Lord CAMPBELL'S Act, and under them, an action might undoubtedly be maintained. And, notwithstanding the objection, that to allow this action under the state statute to be

brought in a federal court, is to give effect to such statute as conferring jurisdiction upon a United States Court sitting in admiralty, the suit may be brought there. The United States Court acting in such case, gets its jurisdiction, not from the state law, but from the federal statute conferring upon it jurisdiction "of all maritime causes," taken in connection with the fact, that the locality of the tort makes the cause of action maritime. "Where a tort is committed upon a public navigable water of the United States, it is a marine tort, within the jurisdiction of the proper Admiralty Court:" *Holmes* v. *O. & C. R. Co.*, 5 Fed. Rep. 75.

The right of action in this case, is analogous to the right of material men to a lien upon a vessel for supplies furnished it in a home port, or to the right to half pilotage conferred in some states, upon the pilot first tendering his services to a vessel which refuses them. Both the lien and the claim for half pilotage exist solely by state laws. They are maritime rights, however, and, as such, are therefore enforceable in a federal admiralty court. "The *origin* of the right is in the state law, but the *nature* of it authorizes the party in whose favor it exists, to sue in the Admiralty Court:" *Holmes* v. *O. & C. R. Co.*, *supra*. And see *The Planter*, 7 Pet. 324; *The Lottawanna*, 21 Wall. 579; *The Wright*, 1 Deady 597; *The California*, 1 Saw. 467; *The Steamship Co.* v. *Joliffe*, 2 Wall. 457; *Ex parte McNiel*, 13 Id. 236.

Of the cases in which the injury occurred upon waters within the jurisdiction of a state, and which are usually cited in support of the maintenance of the action by the administrator, it is observable, that while there are some *dicta* in them clearly indicating that the judges thought that such an action would lie by the civil law, or by the general maritime law, yet the right of action is ultimately and mainly rested upon the statute of the state. Thus in *The Highland Light* (1867), Chase's Dec. 150, the steam-chimney of the vessel had collapsed, while she was navigating waters within the jurisdiction of Maryland, and caused the death of Price, whose widow and son filed their joint libel *in rem* against the steamer. CHASE, C. J., held, that "the positive law of statutes seems to me, to furnish a sufficient rule for guidance in the case of relatives seeking redress for the death of a relative;" * * * that "the law of Maryland, 1 Md. Code 449, * * * establishes in one section the general right to redress, and in another, provides the mode in which redress may be pursued;" that "the right is quite separate from the remedy. The rights, like that of a statute lien upon a vessel for repairs in home ports, may be enforced in admiralty by its own processes. It is not necessary to pursue the statutory remedy, in order to enforce the statutory rights. It is clear, therefore, that for an injury such as that proved in this case, the wife and son of the man killed may have redress in admiralty."

And so in the case of *Holmes* v. *O. & C. R. Co.*, *supra*. That was a suit by an administrator to recover damages for the death of one Perkins, who was killed by defendant's negligence while being ferried across the Willamette river, at Portland, Oregon. The existence of the right of action under the civil or maritime law, is discussed, but the administrator's right to sue is mainly grounded upon the statute of Oregon. "In conclusion," says Judge DEADY, "the tort which caused the death of Perkins, having occurred upon a navigable water of the United States, is a marine one; and even if the maritime law does not give a remedy for the wrong, the law of the state having given the right to the administrator to recover damages therefor, this court, as a court of admiralty, has jurisdiction of a suit to enforce such right."

It is more difficult to show, that a right of action exists in the federal court, when the injury occurs upon the high seas, outside of the jurisdiction of the state.

The common law is firmly established, that no action lies for the death of a human being. See Thompson on Neg., v. 2, 1282, where the authorities upon this point are collected.

It is true, that by the civil law [*lex Aquilia*] an action for damages was given for killing human beings, but they were slaves who were classed with cattle, for the wrongful killing of which, the same law gave the same action: Sandars Justinian 502. The life of a free man was considered inappreciable in coin.

An action was also given by the civil law for personal torts to freemen, but the action was personal to the person injured, and could not be transmitted to his heirs, unless before his death the action had already proceeded as far as the *litis contestatio:* Sandars Justinian 514.

And, in Louisiana it is held, that an action for damages caused by tortiously killing a free human being, cannot be maintained; and the court concluded, that it is a general principle of the Roman law, that actions for personal injuries are strictly personal. 24 Pothier's Pandects 279, Law 13, is cited to sustain this conclusion: *Haigh* v. *New Orleans, &c., R. Co.*, 6 La. Ann. 498, 506.

Nor do any of the great maritime codes—the laws of Oleron, of Wisbuy of the Hanse Towns, or the Marine Ordinance of Louis—give an action for a personal injury, after the death of the person injured.

And it seems to be the understanding of leading text writers on maritime law, that such actions do not survive the death of the person injured: see Benedict's Admr. 185; 2 Parsons's Admr. 351; Hall's Admr. Prac. 21; Dunlap's Admr. Prac. 87. It was so held by Judge SPRAGUE in *Crapo* v. *Allen*, 1 Sprague's Dec. 184.

There is no federal statute giving such a right of action, and the question recurs: will the state statute give the action where the injury occurs upon the high seas?

In *Armstrong* v. *Beadle*, 5 Sawyer 484, it was held, that the statute of California giving a right of action for negligence resulting in death, has no extra-territorial jurisdiction; and that death resulting from negligence on the high seas, is not within the statute. Judge SAWYER reasoned thus: "If it (the statute) operates beyond the territorial jurisdiction of the state, then it becomes a universal law, applicable to all countries, and the legislature of California would be adopting a code of laws affecting the rights of parties arising out of acts done wholly in foreign countries. If California can pass laws of the kind, operating extra-territorially, then other states and countries can pass laws upon the same subject operating in California, and these laws may be in conflict; but there is nothing in the statute to indicate, that it was intended to operate beyond the limits of the state."

But the high seas belong equally to all men, like the air, and no part of them can be rightfully appropriated by any nation: Cooley's Const. Lim. 2. No power now pretends to exercise jurisdiction over them. They are therefore not analogous to a foreign country, having its own laws and its own government; hence to declare a state statute applicable to transactions by its own citizens upon its own vessels upon the high seas, is not to make such statute "a universal law, applicable to all countries." It is not even to make such statute applicable to any "country."

And because the *locus in quo*, the high seas, is not subject to the laws of any other country, there can be no double liability incurred by the tort-feasor; nor can it be said, that the deceased or his representatives are under the protection

of the laws of any other government: see *Mallory* v. *McDonald*, *infra*, 96.

A different objection was raised by Judge SPRAGUE in *Crapo* v. *Allen*, 1 Sprague's Dec. 184. In that case it was held, that a state statute will not enable an administrator to maintain an action in the District Court, for a personal tort committed to his intestate upon the high seas, and which caused his death. Judge SPRAGUE said: "The torts set forth in this libel, were committed on the high seas; the subject-matter, therefore, is within the jurisdiction of all courts of admiralty. But if a suit were commenced in the District Court, sitting in a state where no local statute gave remedy to the administrator, it could not be maintained. I cannot think, that for a transaction upon the high seas, a personal suit in admiralty may be maintained in one district of the United States, and not in others." To this it may be replied, that since all the states have passed statutes such as are referred to (see 2 Thompson on Neg. 1294 *et seq.*), a "suit commenced in the District Court, sitting in a state where no local statute gave a remedy to the administrator," will never occur; such a suit will not, therefore, be maintainable "in one district of the United States and not in others." "By the admiralty rules," continues Judge SPRAGUE, "established by the Supreme Court, if a defendant cannot be found, his property, or his goods or credits, may be attached. Suppose this respondent had never come within this state, and was never, therefore personally within the jurisdiction of this court, but resided within a district where he was liable to no action, can it be that his goods and credits within this state, could be held, by a suit in the admiralty here? Such an incongruity is inadmissible. I think that those claims in the libel, which rest upon mere personal *torts*, cannot be sustained."

To this last objection the reply is, that if the federal government has any jurisdiction to legislate upon such torts as this, it has not exercised it; that, at least, until that jurisdiction has been exercised by Congress, the states may pass laws applicable to the subject; and if the incongruity referred to result from the absence or diversity of such state legislation, it is only a natural and usual consequence of constitution of government. It is not to be expected that the legislation of thirty-eight states will result in conferring upon all citizens the same rights, or to make them in all places subject to the same liabilities; and, further, as all the states have in fact passed statutes similar to Lord CAMPBELL'S Act, the case supposed is impossible of occurrence; the "inadmissible incongruity" will therefore never result. *Crapo* v. *Kelly*, 16 Wall. 610, is the highest and apparently a conclusive authority upon the subject under examination. There A., an insolvent in Massachusetts, owned a vessel. While upon the high seas, the vessel was transferred by an insolvent court of Massachusetts in a proceeding *in invitum* in insolvency, to an official assignee. After this, and upon the arrival of the vessel in New York, it was there attached by New York creditors of the insolvent. The suit was to determine whether the prior right to the vessel was in the assignee in insolvency, or in the subsequent attaching creditors.

The question was assumed to be one concerning the transfer of property, and laws regulating the same; and, expressly distinguishing the case from one in bankruptcy, the position was taken, that the state of Massachusetts had not delegated to the federal government any power to pass laws regulative of the title to property of its citizens upon the high seas, or, at least, that no such power had been exercised by the general government. "It is not perceived," said Mr. Justice HUNT, "* * * that the relation of Massachusetts to the union, has any effect upon the title to this vessel. It

stands as if the state were an independent sovereign state, unconnected with the other states of the union. The question is the same as if this assignment had been made in London by a British insolvent court, adjudicating upon the affairs of a British subject." As to the applicability of the insolvent law of Massachusetts to the vessel while it was upon the high seas, Justice HUNT continued: "The rule is thus laid down by Mr. Wheaton in his treatise on International Law (8th ed., sect. 106, *et seq.*): 'Both the public and private vessels of every nation on the high seas, and out of the territorial limits of any other state, are subject to the jurisdiction of the state to which they belong. Vattel says, that the domain of a nation extends to all its just possessions, and by its possessions, we are not to understand its territory only, but all the rights it enjoys. And he also considers the vessels of a nation on the high seas, a portion of its territory. Grotius holds, that sovereignty may be acquired over a portion of the sea.' As an illustration of the proposition that the ship is a portion of the territory of the state, the author proceeds: 'Every state has an incontestable right to the service of all its members in the national defence, but it can give effect to this right only by lawful means. Its right to reclaim the military service of its citizens, can be exercised only within its own territory, or in some place not subject to the jurisdiction of any other nation. The ocean is such a place, and any state may unquestionably there exercise on board its own vessels, its right of compelling the military or naval services of its subjects.'

"Chancellor KENT, in his commentaries (vol. 1, 26), says: 'The high seas are free and open to all the world, and the laws of every state or nation have there a full and perfect operation upon the persons and property of the citizens or subjects of such a state or nation. No nation has any right or jurisdiction at sea, except it be over the persons of its subjects, in its own public and private vessels; and so far territorial jurisdiction may be conceded as preserved, for the vessels of a nation are, in many respects, considered portions of its territory, and persons on board are protected and governed by the law of the country to which the vessel belongs.'

"Wharton (Conflict of Laws, sect. 356), says: 'A ship in the open sea is regarded by the law of nations as a part of the territory whose flag such ship carries. By this' (he says) 'may be explained several cases quoted as establishing the *lex domicilii*, though they are only sustainable on the ground that the ship at sea is part of the territory whose flag she bears. * * * In respect to principle, ships at sea and the property in them must be viewed as part of the country to which they belong.'

"The modern German law is to the same point. Bluntschli, in his *Moderne Völkerrecht* (sect. 317), says: 'Ships are to be regarded as floating sections of the land to which they nationally belong, and whose flag they are entitled to carry.'

"Bischof, in his *Grundriss des positiven internationalen seerechts* (Graz. 1868, cited in Wharton's Conflict of Laws, sect. 356 n.), says: "Every state is free on the seas, so that its ships are to be regarded as floating sections of its country, *territoria clausa; la continuation ou la prorogation du territoire*, and those on board such ships in foreign waters are under their laws and protection. This even applies to children born to subjects on such ships.'

"Wildman, in his treatise on International Law (40), says: "Provinces and colonies, however distant, form a part of the territory of the parent state. So of its ships on the high seas. The rights of sovereignty extend to all persons and things not privileged, that are within the territory.' * * *

"In the celebrated *Trent Case*, occur-

ring in 1862, Messrs. Mason and Slidell were removed from a British private vessel by Commodore Wilkes, of the San Jacinto, a public vessel of the United States. Great Britain insisted that the rights of a neutral vessel not only had been violated, for which she demanded an apology, but she insisted that these persons should be replaced and returned on board a British ship. This was done, and they were actually placed on board a British vessel in or near the harbor of Boston. They were not British subjects, and their return could only have been demanded for the reason that they had been torn from British soil, and the sanctity of British soil, as represented by a British ship, had been violated."

Plestoro v. *Abraham*, 1 Paige 236, is also cited, and affirming the applicability of the Massachusetts insolvent law to ships of that state upon the high seas, it was *held*, that the ship was a part of the territory of Massachusetts, and that the assignment by the insolvent court of that state passed the title to her in the same manner and with like effect as if she had been physically within the bounds of that state when the assignment was executed: *Crapo* v. *Kelly*, 16 Wall. 610.

Commenting upon this case, Judge RAPALLO in *McDonald* v. *Mallory*, *infra*, 94, says: * * * "I cannot escape the conclusion that under the principle of the case of *Crapo* v. *Kelly*, civil rights of action for matters occurring at sea on board of a vessel belonging to one of the states of the Union, must depend upon the laws of that state, unless they arise out of some matter over which jurisdiction has been vested in and exercised by the government of the United States, or over which the state has transferred its right of sovereignty to the United States, and that to this extent the vessel must be regarded as part of the territory of the state; while, in respect to her relations with foreign governments, crimes committed on board of her, and all other matters over which jurisdiction is vested in the federal government, she must be regarded as part of the territory of the United States and subject to the laws thereof."

And in the case of *McDonald* v. *Mallory*, 7 Abb. New Cas. 84, it was held that in respect to matters not committed by the constitution exclusively to the federal government, nor legislated upon by Congress, but regulated entirely by state laws, the state to which the vessel belongs is regarded as the sovereignty whose laws follow her upon the nigh seas, and until she comes within the jurisdiction of some other government; that the statute of the state of New York, giving a right of action for causing death by wrongful act or neglect, is not to be restricted to the actual territorial bounds of the state, but that under it, an action can be maintained for thus causing the death on the high seas, on board of a vessel hailing from and registered in a port within the state of New York, the person whose death was so caused being also a citizen of such state, the vessel being at the time employed by the owners in their own business, and their negligence having caused the death.

In The Steamship *City of Brussels*, 6 Benedict 370, it was *held* that the cause of action arose on contract and survived to the administrator. In that case, a child who was a passenger from Liverpool to New York, was poisoned on the passage and died, as was alleged, in consequence of negligence on the part of the officers of the ship. The father, as administrator, libelled the vessel for damages. And see *Coggins* v. *Helmsley*, 23 Int. Rev. Rec. 384; s. c. 34 Leg. Int. 394; *The Sea Gull*, Chase's Dec. 145; *Plummer* v. *Webb*, 1 Ware 69; s. c. 4 Mason 380; *Catting* v. *Seabury*, 1 Sprague 522; *The Charles Morgan*, 18 Am. Law Reg., N. S. 624; *Brannick* v. *Sea Gull*, 16 Pitts. L. J. 194.

This examination of the cases seems to warrant the following statement of

the law. The wrongful killing of a human being is a tort within the jurisdiction of the state governments. Statutes passed by them giving to the administrator or executor of the deceased a right of action for such tort, are applicable when the killing takes place upon navigable waters within the territorial limits of the states respectively. On the principle that, as to matters within the jurisdiction of a state, its laws, unless superseded by federal statutes, follow and are in force upon vessels of the state upon the high seas, such statutes also give the executor or administrator a right of action when the killing takes place upon the high seas. The tort being maritime, the right of action will be enforced in a court of admiralty of the United States, whenever the killing is upon a navigable water.

ADELBERT HAMILTON.

Supreme Court of Indiana.

BUNNELL *v.* HAYS ET AL.

A householder is one upon whom rests the duty of supporting the members of his family or household.

A widower is a householder within the meaning of the exemption laws, although all his children have arrived at full age and have left his domicile, leaving him, so far as wife, children or kinsmen are concerned, living alone.

Where a man has, at the death of his wife, only an adopted child, and he employs a family to keep house for him, he furnishing the greater part of the furniture and nearly all the fuel, and paying the family so much per week; and the family supplying the food, caring for his room and doing his washing, such an one is a householder within the meaning of the exemption laws.

THE facts were as follows:—Bunnell, the appellant, who was the owner of the personal property involved, became a resident of White county, Indiana, in December 1877, and continuously resided there until the trial of this action. His family, at the time he became a resident of said county, consisted of his wife and an adopted child. In March 1878, appellant's wife died; thereafter appellant employed a family to keep house for him, he providing the house, the greater part of the furniture and nearly all the fuel, and paying the person who kept house for him, in addition the sum of $1.20 per week. The person or persons who kept house for him supplied the food, cared for appellant's room and did his washing. An execution was issued against appellant on the 26th day of November 1878, and on the 6th day of December of the same year, was levied on the personal property in controversy. At the time the levy was made, the child was living with appellant, but at the time of the trial, was on a visit to its natural mother. Prior to the levy of the execution, appellant claimed his right to